

**ORDINANCE NO. 45**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF CARLSBAD MUNICIPAL WATER DISTRICT (CMWD), CARLSBAD, CALIFORNIA, TO DEFINE AND ESTABLISH PRICES AND CONDITIONS OF WATER DELIVERY; TO PROVIDE METHOD OF ESTABLISHING AND FIXING RATES AND CHARGES FOR WATER DELIVERED; TO PROVIDE METHOD FOR EXTENSION OF CMWD FACILITIES; REGULATING THE ISSUANCE OF WATER METERS; ESTABLISHING PROCESS AND FEES FOR ENGINEERING SERVICES RELATED TO LAND DEVELOPMENT; DEFINING METERS AND FIRE HYDRANTS, WATER EFFICIENT LANDSCAPING; CROSS CONNECTION CONTROL PROGRAM; ESTABLISHING PROCEDURES FOR WORK IN CMWD RIGHT-OF-WAY; AND REPEALING ORDINANCES 26, 29, 37, 39, 40, AND 42.**

WHEREAS, Carlsbad Municipal Water District, hereinafter called CMWD, is organized under the Municipal Water District Law of 1911, Division 20 (commencing with Section 71000) of the California Water Code; and

WHEREAS, on April 25, 1989, the City of Carlsbad adopted Resolution No. 89-126 which established the CMWD as a subsidiary district to the City of Carlsbad effective January 1, 1990, where the responsibilities for the City's water system were transferred to the CMWD; and

WHEREAS, the City of Carlsbad's water system was operated under its Municipal Code Title 14 "Water" which does not apply to CMWD, but specific provisions from Title 14 concerning improvement plan review, water or recycled water meters, water or recycled water service connections, service charges, water or recycled water pipeline extensions and facilities, and cross connection control program need to be addressed in a new CMWD Ordinance; and

WHEREAS, the Municipal Water District Law of 1911 provides the method by which CMWD shall establish types and conditions of service, fix rates and charges, provide a method of extension of facilities and repeal existing Ordinances as necessary; and

WHEREAS, on June 4, 1996, by adoption of Resolution No. 939, the Board revised the Delivery Charge basis, retained the "Commodity Charge" basis, revised the Connection fee basis, established the reclaimed water Commodity charge, and reclaimed water Connection fee; and

WHEREAS, on August 13, 1996, by adoption of Resolution No. 954, the Board of Directors of CMWD eliminated the "New Demand Charge" applicable to Metropolitan Water District of Southern California; and

1 WHEREAS, on November 18, 2003, by adoption of Resolution No. 1194, the  
2 Board of Directors of CMWD approved the 2003 CMWD Water Master Plan Update and  
3 changed the CMWD Water Service Connection fee; and

4 WHEREAS, on November 18, 2003, by adoption of Ordinance No. NS-682, the  
5 City Council for the City of Carlsbad approved CMWD Water Connection Fee annual  
6 adjustment using Engineering News Record percentage change with the base index in  
7 effect in December 2003, and modified Title 14 of the Municipal Code Chapter  
8 14.16.120 Service Connection Charges; and

9 WHEREAS, on June 14, 2005, by adoption of Ordinance No. 43, the Board of  
10 Directors of CMWD mandated the use of recycled water and rescinded Ordinance No.  
11 31; and

12 WHEREAS, present conditions render provisions in existing Ordinances No. 26,  
13 29, 37, 39, 40 and 42 unnecessary; and

14 WHEREAS, the Board of Directors of CMWD deem it expedient, proper and  
15 necessary to establish and define types and conditions of water delivery, provide  
16 method of fixing rates and charges, provide for extension of facilities, establish  
17 procedure for work in CMWD right of way, and repeal certain existing Ordinances.

18 NOW, THEREFORE, the Board of Directors of the CMWD of the City of  
19 Carlsbad, California, hereby ordains as follows:

## 20 **ARTICLE I - REPEAL**

21 That Ordinances Nos. 26, 29, 37, 39, 40 and 42 are hereby repealed in their entirety.

## 22 **ARTICLE II – GENERAL REGULATIONS**

### 23 **SECTION 1: Definitions**

24 The following terms are defined for purposes of this ordinance:

- 25 1.1 "Applicant" means a person who applies for water or recycled water service.
- 26 1.2. "Board" means Board of Directors of the Carlsbad Municipal Water District.
- 27 1.3. "City of Carlsbad" means a municipal corporation in the State of California.
- 28 1.4. "CMWD" means Carlsbad Municipal Water District.
- 1.5. "Connection" means the metered water or recycled water service connection  
from a CMWD water or recycled water pipeline facility, respectively.
- 1.6. "Cost" includes labor, material, transportation, expense, supervision,  
engineering and other necessary overhead expense.
- 1.7. "Customer" means any person to whom the CMWD supplies water or  
recycled water service under a contract, either expressed or implied, to make  
payment therefore.
- 1.8. "Delivery Charge" means the minimum monthly charge to a customer for  
availability of service, the revenue from which enables the CMWD to maintain

1 and operate a water system and a separate recycled water system ready to  
2 deliver to a customer. The Delivery Charge shall be based on the size of the  
3 water meter that is appropriate to provide service for the customer.

4 1.9. "Engineering Service Fees" means plan checking and inspection service fees  
5 for review of water and recycled water facility improvement plans submitted  
6 by applicant, customer or their Engineer and subsequent inspection of the  
7 installation of water and recycled water facilities in conformance with  
8 approved standard drawings and specifications.

9 1.10. "Extension" means water or recycled water pipeline extension.

10 1.11. "Executive Manager" shall mean the position that reports to the Board of  
11 Directors of the Carlsbad Municipal Water District.

12 1.12. "General Counsel" means the position that has been appointed by the Board  
13 of Directors to advise on legal matters.

14 1.13. "General Manager" means the position that reports to the Executive Manager  
15 of the Carlsbad Municipal Water District and is responsible for the operation  
16 and maintenance of the water system and recycled water system.

17 1.14. "Industrial or commercial" means any customer using water or recycled water  
18 for a building or landscape irrigation of the site that is not a residential unit for  
19 the purpose of producing goods or services other than the services of  
20 housing, permanent or transient occupants.

21 1.15. "Legal or equitable owner" means any owner of record, mortgage trustee or  
22 contract purchaser.

23 1.16. "Meter" means device to measure the amount of water or recycled water the  
24 customer uses in units where one unit is 748 gallons.

25 1.17. "Pipeline" means an existing or proposed water or recycled water pipeline in  
26 the water or recycled water distribution system, respectively of the CMWD.

27 1.18. "Public Works Director" means the Public Works Director of the City of  
28 Carlsbad or his designated representative. The Public Works Director is  
responsible for the engineering decisions required for the planning, design,  
and construction of CMWD's water and recycled water facilities.

1.19. "Recycled water", sometimes referred to as reclaimed water, means water  
obtained from the treatment of domestic waste water which is suitable for  
direct beneficial use or a controlled use that otherwise would not occur and  
also meets the highest level in conformance with California Code of  
Regulations, Title 22, Division 4, Chapter 3 (use of recycled water for  
irrigation and for impoundments), currently section 60304 and section 60305.

1.20. "Recycled Water Connection Fee" means the fee paid for the planning,  
design and construction of capacity improvements and/or new facilities  
required for the delivery, distribution, and storage of recycled water.

1.21. "Residential Unit" means any single family residential living unit which  
includes but is not limited to the following: houses, duplexes, apartments,  
condominiums, and mobile homes.

1.22. "Risk Manager" means the Risk Manager of the City of Carlsbad.

1.23. "Service Connection" includes the tapping of a CMWD water or recycled  
water pipeline and the laying of a service line from the tapped connection on  
the pipeline to the meter location.

1.24. "Water" means potable water fit for human consumption in accordance with  
applicable State of California Department of Public Health (CDPH) standards.

1.25. "Water Connection Fee" means the fee paid for the planning, design and construction of capacity improvements and/or new facilities required for the delivery, distribution, and storage of water.

## **SECTION 2: Wasting Water; Report to CMWD**

No person shall willfully or neglectfully waste water in any manner whatsoever; and any person having knowledge of any condition whereby water is being wasted shall notify the CMWD of such fact by contacting the Executive Manager.

## **SECTION 3: Adoption of Rules and Regulations**

The Board may, from time to time by resolution, adopt rules and regulations for the operation and maintenance of the water and recycled water facilities of the CMWD, and for furnishing water or recycled water to customers, and may likewise by resolution modify the rates, charges, fees and penalties established and imposed by this Ordinance, and may from time to time by resolution prescribe rules for the extension of water or recycled water pipelines within the boundaries and outside the boundaries of the CMWD.

The Executive Manager may, from time to time, issue rules and regulations to carry out the purposes of this Ordinance.

## **SECTION 4: Failure to Comply with Rules and Regulations or Pay Rates; Penalty**

On failure to comply with the rules and regulations established by the CMWD as a condition precedent to the right to use the water or recycled water, or to pay rates or any charges imposed, in the time and manner stated in this Ordinance, upon reasonable notice, the water and recycled water will be shut off until payment of amount due including a ten percent (10 %) late fee is received by CMWD. Charges not paid after 44 days are considered delinquent and are subject to additional fees. Charges will continue to accrue until customer notifies the CMWD to discontinue service. CMWD may be notified in writing or by calling the City of Carlsbad's Billing Division of the Finance Department. If the water or recycled water bill remains unpaid after forty four (44) days following the mailing date of such bill, then the Executive Manager may cause the water or recycled water service to be shut off from the premises where the delinquency occurs and the same meter shall remain shut off until all bills, plus any additional charges shall have been paid.

## **SECTION 5: Turning Water or Recycled Water On and Off from Premises**

No one except an authorized employee of the CMWD or City of Carlsbad shall turn the water or recycled water on or off from any building or premises at a service gate valve, angle meter stop valve, or corporation stop valve located upstream of the meter.

1       **SECTION 6: Persons Not to Interfere with CMWD Water System**

2       No person shall in any manner whatsoever meddle, tamper with, or interfere with any  
3       part of the water or recycled water system of the CMWD.

4       **SECTION 7: Entrance Upon Private Property by Employees of CMWD**

5       Any authorized employee of the CMWD or City of Carlsbad shall be admitted at all  
6       reasonable hours to all open areas of the premises supplied by water or recycled water  
7       to verify facilities are in good operating condition, to make any repairs, replacements or  
8       improvements, and to verify that rules and regulations are observed by the customer.

9       **SECTION 8: Right of CMWD to Enter Premises, Install Meters and Enforce**  
10       **Collection of Charges**

11       Any authorized employee of CMWD or City of Carlsbad shall have the right at any time,  
12       and at any point where water or recycled water is used, to install a water or recycled  
13       water meter of adequate size, and enforce collection for the amount of water or recycled  
14       water that shall be used, in accordance with all the Ordinances, Rules and Regulations  
15       of the CMWD governing the consumption of water or recycled water, and for that  
16       purpose may at any time go upon the premises of the customer of water or recycled  
17       water.

18       **SECTION 9: Interference with Inspection; Stoppage of Service; Notice Required**

19       In case any authorized employee or agent of the CMWD or City of Carlsbad be refused  
20       admittance to any premises supplied with water or recycled water by the CMWD, or on  
21       being admitted he or she shall be hindered or prevented from making such examination  
22       or inspection by any person, or for any reason thereto, the maintenance on such  
23       premises of a vicious dog or animal, or for any other reason, the Executive Manager of  
24       the CMWD may cause the service of water or recycled water of such premises to be  
25       discontinued, after giving written notice to the owner or occupant thereof of his/her  
26       intention to do so.

27       **SECTION 10: Service of Notice of Stoppage of Water or Recycled Water Service**

28       Such notice as is provided for in Section 9 shall be deemed served upon the legal  
owner or occupant thereof if it is mailed to his/her last known address, and a copy  
thereof mailed to such premises if his/her mailing address is not at such premises, or a  
door hanger may be placed at the premises by CMWD or City of Carlsbad employee  
notifying legal owner or customer of water or recycled water service being shut off, or  
other method that the Executive Manager determines to be legally sufficient to ensure  
adequate notification is received by the legal owner or occupant.

Water or recycled water service may be discontinued until the customer or owner has  
given satisfactory assurance to the Executive Manager that any such employee will not  
be hindered or prevented from making such examination or inspection.

**SECTION 12: Liability of CMWD to Damage from Break Beyond Meter**

The CMWD will not be responsible for injuries or damages to buildings or their contents from any water leakage, damage or earth movement originating from a break beyond the meter connection.

**SECTION 13: Responsibility for Damage Resulting from Turning Off Water or Recycled Water**

The CMWD shall not be responsible for any damage, such as bursting of boilers, damage to crops or landscaping, the breaking of any pipe or fixture, stoppage or interruption of water or recycled water supply, or any other damage resulting from the shutting off of water or recycled water.

**SECTION 14: Unlawful Use of Water, Recycled Water, Facilities and Appurtenances**

It is unlawful for any person to open any fire hydrant, corporation stop valve, gate valve, angle meter stop valve or to interfere in any manner with any water service, water connection, or any water meter attached to any service pipe connected to the water pipelines, or to turn on or off water or recycled water pipelines of the CMWD, or to tap, break, or injure any water or recycled water pipeline of the CMWD, or any reservoir, pumping station or pressure reducing station of the CMWD, or to tap any water or recycled water service pipe, or take or draw water from any water pipe or fire hydrant of the CMWD without paying the established water rate therefor, after having made written application and received permission therefore as provided by this ordinance or in anywise to trespass upon the public property of the CMWD without written permission first being obtained from the CMWD.

**SECTION 15: Bills for Labor, Materials**

All bills for labor and materials furnished, or other charges not provided for otherwise, shall become due and payable thirty days from date of mailing.

**SECTION 16: Settlement of Disputes between Customer and CMWD**

If a dispute arises between any water or recycled water customer and the CMWD concerning water or recycled water service or the amount of a water or recycled water bill to such customer, the dispute may be settled, subject to the approval of the Board, by the Executive Manager. The final decision and settlement of any such dispute shall be recorded in the minutes of the Board.

The provisions and procedures provided for in this section are permissive only and shall in no way affect the other provisions of this Ordinance.

1       **SECTION 17: No Mandatory Duty**

2       Nothing in this Ordinance is intended to create a mandatory duty on behalf of CMWD or  
3       the City of Carlsbad and/or its employees under the Government Tort Claims Act and  
4       no cause of action against CMWD or the City of Carlsbad and/or its employees is  
5       created by this chapter that would not arise independently of the provisions of this  
6       ordinance.

7       **SECTION 18: Claims for Damage.**

8           (a) No claim for injuries or damages against the CMWD shall ever be allowed or  
9           paid unless there has been first filed with the Secretary to the Board a claim  
10          therefor within the time periods required by subsection (b) of this section. All such  
11          claims for damages shall be first verified by the claimant before an officer  
12          authorized to administer oaths.

13          (b) A claim relating to a cause of action for death or for injury to person or to  
14          personal property or growing crops shall be filed not later than six months after the  
15          accrual of the cause of action. A claim relating to any other cause of action shall be  
16          filed not later than one year after the accrual of the cause of action.

17                               **ARTICLE III**

18                               **RETAIL WATER AND RECYCLED WATER RATES, AND**  
19                               **COLLECTION THEREOF**

20       **SECTION 1: New Account Fee**

21       A new account fee as determined by resolution of the Board will be assessed on a  
22       customer on their first bill. The CMWD requires at least 24 hours notice of water service  
23       turn-on. If customer contacts the CMWD the same day that customer wants service  
24       turned on, then the customer will have an additional charge assessed on their next  
25       water bill. If customer requests service on holidays, weekends, or after 5:00 p.m. on  
26       weekdays to have water turned on the same day, then a charge must be paid to the  
27       CMWD on the following normal working day.

28       **SECTION 2: Continuity of Service Fee (Landlords Only)**

      The CMWD will provide a continuity of service fee option for landlords only who wish to  
      retain water service to rental properties during periods of vacancy. The Continuity of  
      Service must be requested by the Landlord and a fee, as determined by a resolution of  
      the Board, paid to CMWD. The water bill will be sent to the Landlord's address and the  
      Landlord will be billed for the Continuity of Service fee.

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1       **SECTION 3: Delivery Charge**

2       The CMWD shall charge each customer a monthly Delivery Charge for each service  
3       connection with a meter in such amounts as provided by resolution of the Board as  
4       adopted from time to time.

5       **SECTION 4: Delivery Charge for Residential Automatic Fire Extinguishing  
6       System**

7       When a water meter for a single family residential unit is required to provide standby  
8       capacity for a automatic fire extinguishing system, the Delivery Charge will be  
9       determined according to the size of the meter necessary to meet the water use  
10      requirements for the customer, as determined according to the rules of the CMWD,  
11      without consideration of additional size necessary to provide the Delivery Charge. The  
12      Delivery Charge to provide water for a automatic fire extinguishing system is required  
13      when (1) the automatic fire extinguishing system is required by law, including any  
14      requirement imposed as a condition of development, permit, or occupancy, and (2) the  
15      fire chief, fire marshal or building official of the City of Carlsbad has provided a written  
16      statement verifying the requirement for additional meter size. The determination under  
17      this section shall be made at the time the meter is first obtained, or at the time a meter  
18      is replaced with one of greater size because of the later installation of the automatic fire  
19      extinguishing system. This provision shall not apply to meters greater than one inch in  
20      size.

21      **SECTION 5: Delivery Charge - Proration**

22      The delivery charge will be prorated based on the normal date the meter is read for the  
23      month that water service is started.

24      **SECTION 6: Delivery Charge Where House Becomes Vacant; Request for  
25      Discontinuance of Service**

26      If a single family residence becomes vacant, the regular monthly Delivery Charge shall  
27      be charged and collected from the owner thereof; whether water is used or not; until the  
28      day upon which the office of the CMWD is notified of the fact that the property is  
29      unoccupied and is requested to shut off water therefrom.

30      **SECTION 7: Rate Structure**

31      The CMWD rate structure shall be approved by the Board. Rates shall be set at a level  
32      sufficient to pay for water purchases, maintenance and operations, debt service,  
33      replacement funding, adequate reserves, and to meet the objectives established by the  
34      Board.

35      Residential Water Rate - The Residential water rate is a tier rate per unit of water used  
36      where one unit equals 748 gallons.



1 Commercial/Non-Residential – The Commercial/non-residential water rate is a flat rate  
2 per unit of water used where one unit equals 748 gallons.

3 Agricultural Water Rate - The Agricultural water rate shall be in compliance with the rate  
4 reduction and rules and requirements adopted by the Metropolitan Water District of  
5 Southern California and the San Diego County Water Authority in relation to cost and  
6 availability of imported water. Once a customer is authorized an Agricultural Water  
7 Rate, that customer must comply with water supply reductions under CMWD's  
8 Ordinance 30 when the Board declares Stage 2 or higher water conservation stages.

9 The Recycled Water Rate – The Recycled water rate is a flat rate per unit of recycled  
10 water used where one unit equals 748 gallons, and applies only to the delivery of  
11 recycled water to the customer.

### 12 **SECTION 8: Water Rates, Charges, and Fees to be Established by Resolution**

13 The rates, charges, and fees for all water and recycled water delivered by CMWD shall  
14 be fixed, and may be changed as necessary, by Resolution of the Board after following  
15 the provisions required by the California Constitution. All water and recycled water bills  
16 shall be due on mailing and must be paid by the due date printed on the water or  
17 recycled water bill.

### 18 **SECTION 9: Meter Readings and Billings**

19 Meters shall be read and billings rendered on a monthly basis. The billing period is 30  
20 days and is based on the meter reading date. The date on which the bill is deemed  
21 delinquent shall be indicated on the bill.

### 22 **SECTION 10: Service Charges to be a Lien Against Property of Consumer**

23 In addition to any other remedy provided for in this Article for the enforcement and  
24 collection of any water and recycled water rates, charge, fee or account, all rates  
25 provided for in this Ordinance shall be charged against the property on which it is  
26 furnished, and against the owner thereof, and shall be a lien against the premises to  
27 which any water or recycled water may be supplied, and a charge against the owner  
28 thereof and the occupant thereof using the water. If for any cause any sums owing  
therefore become delinquent, the water or recycled water shall be cut off and in no case  
shall it be turned on to the same property until all such delinquencies shall have been  
paid in full. Such property owner and occupant shall be severally responsible to the  
CMWD in an action brought by the CMWD in any Court of competent jurisdiction for the  
amount of all such money as may be due and unpaid, together with all penalties  
provided herein and costs. No change of ownership or occupation shall affect the  
application of this Article. This section shall not apply to non-permanent connections.

### 29 **SECTION 11: Shutting Off Water on Supply Side of Meter**

30 Upon the written request or call to the City's Billing Division of the Finance Department,  
31 of the customer or occupant of a building or premises to have the water shut off on the  
32 supply side of the meter, the CMWD shall have the water shut off, and at the time  
33 record the reading of the meter and render a bill in a sum which shall be the greater of

1 the amount of water used according to the rates and charges provided for, or for the  
2 monthly minimum charge due for the fractional part of the month.

### 3 **SECTION 12: Adjustment of Bills for Meter Error**

4 (a) Fast Meters: When upon test, a meter is found to be registering fast within the  
5 tolerances above set forth in Article IV, Section 6, the CMWD shall refund to the  
6 customer the amount of the overcharge, based upon corrected meter readings for the  
7 period the meter was in use, but not-to-exceed a period of six months.

8 (b) Slow Meters: When, upon test, a meter is found to be registering slow beyond  
9 the tolerances above set forth in Article IV, Section 6, the CMWD shall bill the customer  
10 for the amount of the undercharge, based upon corrected meter readings for the period  
11 the meter was in service, but not-to-exceed a period of six months.

12 (c) Failed Meter Reads: In the event a water meter fails to register during any month,  
13 a charge will be made based upon three month average amount of water used during  
14 the same period for the previous year. In the event there was no meter at this place  
15 during the previous year, a charge will be made upon an estimate fixed by the CMWD,  
16 which shall be paid by the customer.

17 (d) General: When it is found that the error in a meter is due to some cause, the date  
18 of which can be fixed, the overcharge or the undercharge shall be computed back to,  
19 but not beyond, such date.

## 20 **ARTICLE IV**

### 21 **METERS, SERVICE CONNECTIONS, CONNECTION FEES AND PAYMENT 22 THEREOF**

#### 23 **SECTION 1: Service Connections in Public Right-of-Way or Easements**

24 All water service connections shall be in conformance with CMWD standard  
25 specifications and standard drawings in affect at the time the connection is installed;  
26 and all such connections must be inspected and approved by the Public Works Director  
27 or his designated representative before water is admitted through meters.

#### 28 **SECTION 2: Meter Installation**

All water and recycled water meters shall be new or be certified for accuracy to meet  
standards of the American Water Works Association through testing performed or  
approved by the CMWD before being installed.

#### **SECTION 3: Service Connection and Meter Ownership**

The "Water/Sewer Connection Permit" shall note the date of connection for all service  
connections, and upon this date the service connection will become the property of the  
CMWD and the CMWD's responsibility to maintain. The meter will become the property  
of the CMWD and the CMWD's responsibility to maintain upon its installation by CMWD  
or its authorized agent.

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2 **SECTION 4: Charges for Replacement, Repairs or Adjustment Caused by**  
3 **Negligence, Etc., of Customer, Non-Payment**

4 Where replacement, repairs or adjustments of any service connection or meter are  
5 deemed necessary by the act, negligence or carelessness of the customer, any  
6 expense caused the CMWD thereby, shall be charged against and collected from the  
customer. If the customer fails to pay such charges, water may be shut off until such  
charges are paid.

7 **SECTION 5: Examination of Meters at Customer's Request - Deposit**

8 Any customer may request that the meter, through which water or recycled water is  
9 being delivered, be examined and tested by the CMWD or Maintenance and Operations  
10 Department of the City of Carlsbad for the purpose of ascertaining whether or not it is  
11 registering correctly the amount of water which is being delivered to it. Such request  
12 shall be accompanied by payment of a deposit fee as established by resolution of the  
Board. Upon receipt of such request, the Executive Manager will cause the meter to be  
examined and tested for the purpose of ascertaining whether or not it is registering  
correctly the water or recycled water being delivered through it.

13 **SECTION 6: Examination of Meters at Customer's Request – Replacement of**  
14 **Defective Meter; Forfeiture of Deposit**

15 If, on examination and test, the meter shall be found to register a percentage of more or  
16 less than actually passes through it, than allowed by the tolerances for such a meter as  
17 established by the American Waterworks Association standards, another meter shall be  
18 substituted therefore. If the meter is determined to be registering more water than  
19 actually passes through it within the tolerances above set forth, the above deposit will  
be refunded to the customer, but in the event the meter shall be found to be accurate or  
registering less water than actually passes through it, the fee so deposited shall be  
forfeited to the CMWD.

20 **SECTION 7: Water Meter Permit**

21 It is unlawful for any person to connect to or use the CMWD's water system without first  
22 obtaining a Water Meter Permit. That concurrently with issuance of a valid building  
23 permit for a new structure or for a mobile home, upon application and payment of the  
24 required fees, the CMWD's Executive Manager may authorize connection of the  
25 structure for which the building permit has been issued or the mobile home has been  
26 issued, to the water system. Every Water Meter Permit issued shall be returned if the  
27 building permit for the structure to which the connection is being made or for the mobile  
28 home to be connected, expires by limitation or otherwise becomes null and void. If a  
Water Meter Permit has expired, then before the connection for such structure or mobile  
home can be made, a new Water Meter Permit shall be obtained and the fee shall be  
one-half of the required fee for the original Water Meter Permit unless one year has  
passed since the expiration in which case the fee shall be the same as a new Water

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1 Meter Permit. Water Meter Permits for the connection of an existing structure to the  
2 water system may be issued by the Executive Manager at any time upon proper  
application.

3 Every Water Meter Permit issued pursuant to this subsection shall expire by limitation  
4 and become null and void if work on the connection authorized by such permit is not  
5 completed within one hundred eighty (180) days from the date of issuance of such  
permit. Reasonable extensions may be granted by the Executive Manager in writing.

### 6 **SECTION 8: Water and Recycled Water Connection Fee**

7 Applicants for installation of a service connection(s) shall pay a Water Connection Fee,  
8 and at locations where recycled water is to be used, a Recycled Water Connection Fee  
9 in the amount as set from time to time by a resolution of the Board. The recycled water  
10 connection fee shall be equal to the water connection fee for the same size meter;  
11 however, a recycled water connection is not required to pay San Diego County Water  
12 Authority's water connection fee. When a water meter for a single family residential unit  
13 is required to provide standby capacity for a automatic fire extinguishing system, the  
14 water connection fee will be determined according to the size of the meter necessary to  
15 meet the water use requirements for the customer, as determined according to the rules  
16 of the CMWD, without consideration of additional size necessary to provide the delivery  
17 of water for the automated fire extinguishing system. The water connection fee and  
18 recycled water connection fee shall be adjusted annually by a resolution of the Board by  
19 the percentage change in the Engineering News Record Los Angeles Construction Cost  
Index with the base index in effect in December 2003, or subsequent resolution of the  
Board.

20 For all residential units, the water connection fee shall be paid at the time of issuance of  
21 a building permit for the property. For commercial and industrial development projects  
22 the water connection fee shall be paid at the time of application for a "Water Meter  
23 Permit". The Recycled water connection fee shall be paid at the time the recycled water  
24 irrigation system has been tested by the City of Carlsbad's Cross connection specialist  
25 and recycled water can be supplied to the irrigation system. Customer shall provide  
26 CMWD a 24-hour notice for the recycled water irrigation meter.

27 A credit on a water or recycled water connection fee will be made for the exchange of  
28 an existing meter service for a new meter service, or relocation of a meter service. The  
credit shall only apply to the water or recycled water connection fee. The credit amount  
shall be based on the connection fee amount in affect at the time the exchange is made.  
No credit shall be applied for exchange to a smaller meter.

### 23 **SECTION 9: Minimum Water Meter Size for Buildings**

24 (a) Residential Unit - For residential units the minimum size meter shall be 5/8", except  
25 where the residential unit is larger than 3,500 square feet or on a lot larger than one  
26 quarter (1/4) acre where the meter size shall be 3/4". Where there is a residential  
automatic fire extinguishing system the minimum meter size shall be 1".

(b) Commercial and Industrial - For a commercial building, office condominium, and industrial building an estimate shall be made of the supply demand in gallons per minute (gpm) as determined from the California Plumbing Code "Appendix A", latest adopted edition by the City of Carlsbad. In addition, for industrial buildings all process water demand, if applicable, shall be added to the supply demand determined above in "Appendix A" to determine the peak supply demand. The estimated peak supply demand shall be compared to the maximum rated capacity of each meter size and the capacity of the selected meter size shall be capable of conveying the peak supply demand calculated in gpm for the building.

#### **SECTION 10: Irrigation Water Meters**

A meter and service connection used for landscape irrigation exclusively shall be installed in accordance with CMWD standard specifications and drawings in affect at the time the connection is made. The size of the irrigation water meter(s) and service connection shall be determined by the landscape architect based on the flow demand in gallons per minute (gpm) for the area to be irrigated. The minimum size meter(s) shall be capable of supplying the peak irrigation water demand determined.

At locations where water is used for irrigation, then the water connection fees shall be based on the CMWD connection fee and charges, and also include the San Diego County Water Authority's connection fee applicable to the meter size. If recycled water is used, then only the CMWD connection fee and charges shall apply. The San Diego County Water Authority will refund their connection fee amount to the customer if recycled water is eventually supplied to the service connection and meter within one year of the original application for Water Meter Permit. The customer must prepare and submit the San Diego County Water Authority's "Capacity Charge Refund Request" form to CMWD for verification to request the connection fee refund.

#### **SECTION 11: Maximum Water Meter Size**

No water meter larger than a two-inch (2") meter shall be installed on any lot, or to any customer, except upon approval and consent of the Public Works Director.

#### **SECTION 12: Construction Meters**

Water or recycled water used for construction shall be metered. Recycled water shall be used when it is available. A construction meter is obtained by applying for a water meter permit. The CMWD may connect a construction meter to any fire hydrant, service connection upon proper application. The cost for a construction meter shall be comprised of a deposit fee and a rental fee. The deposit fee will be refunded after the meter is returned in good working order complete with fittings, and all bills pertaining thereto are paid. The meter will be installed and removed by authorized CMWD or City of Carlsbad employees. Any damage caused to the meter by the negligence or carelessness of any person to whom a meter is loaned must be paid on demand. Water delivered through a construction meter will be charged at the Standard Water Rate, including delivery charges. An additional fee will be charged upon each request to have a construction meter relocated.

1 The use of "jumpers" in place of a meter shall not be allowed on a temporary basis to  
2 test water pressure in the plumbing of a new building, residence, or other purpose.

### 3 **SECTION 13: Fire Protection Meters**

4 A fire protection meter shall be installed on commercial and industrial buildings and  
5 when required by the City's Fire Marshall on residential units. The purpose of the fire  
6 protection meter is to monitor if any water has been used from the fire protection line.  
The fire protection meter is only charged a meter fee. No connection fees apply.

### 7 **SECTION 14: Meter Installation Charges**

8 Applicants for installation of water meters shall pay installation charges as set from time  
9 to time by a resolution of the Board. In the event a customer has an installed meter but  
10 wishes to exchange it for another smaller size meter, he shall receive a rebate of the  
11 difference between the charges for the larger and smaller meter in effect at the time the  
original meter was installed; but, if he substitutes a larger meter for a smaller meter, he  
shall pay the difference between the current charges for the smaller meter and the  
larger meter.

### 12 **SECTION 15: Repairs by CMWD**

13 All water and recycled water meters are the property of the CMWD and the CMWD will  
14 maintain and repair them when in its judgment such repairs are needed.

### 15 **SECTION 16: Transportation of Water Across Property Line**

16 Water served through a meter shall not be transported through pipes or conduits across  
17 lot lines or property lines.

### 18 **SECTION 17: Connection – Liability for Damage**

19 When any person connecting a water service pipe to the property side of a meter uses  
20 water for testing the pipes, he or she must leave the service box in as good condition as  
21 found, and shall leave the water shut off if found shut off, and shall in writing notify the  
CMWD or City of Carlsbad at the time the connection is made. Any damage caused by  
the negligence or carelessness of any person to any part of the meter box or  
connection, must be paid by the person to the CMWD on demand.

### 22 **SECTION 18: Liability of Customer for Damages to Meter**

23 After the water or recycled water meter is so connected to the service connection, any  
24 damage to such meter resulting from an intentional act, carelessness or negligence of  
25 the customer, or anyone employed by him, and any damage which may result from hot  
26 water or steam from a boiler, or otherwise, shall be paid for by such customer to the  
CMWD on presentation of a bill therefore; and in case such bill is not paid, the water  
shall be shut off from the premises without further notice, and the same shall not be  
turned on until all charges are paid.

1       **SECTION 19: Cutting Off or Interfering with Meter**

2       It is unlawful for any person to interfere with or cut off or remove a water or recycled  
3       water meter from any service connection where it has been installed, without first  
4       receiving written permission from the CMWD or City of Carlsbad's Maintenance and  
5       Operation Department. Such permission shall be granted only for the purpose of tests,  
6       replacements, repairs to meter or service pipes, readjustments of service, or similar  
7       emergency.  
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## ARTICLE V

### CONNECTIONS AND INSTALLATIONS OF SERVICE

#### SECTION 1: Shut Off Valve for CMWD

There shall be an angle meter stop valve installed on the immediate upstream side of the meter which angle meter stop valve shall be paid for by the customer but shall be the property of the CMWD, and shall be for exclusive use and under its exclusive control.

#### SECTION 2: Shut Off Valve for Customer

The water customer is hereby required, for their own protection, to provide, at their own expense, a shut off valve consisting of a ball valve to be connected to the meter immediately downstream of the meter and accessible to the employees of the CMWD or City of Carlsbad.

#### SECTION 3: Distance of Sewer, Gas, or Other Service Pipe from Water Service

No sewer pipe, gas pipe or any other service pipe shall be installed or maintained nearer than ten feet parallel to any service connection, water pipeline or meter of the CMWD without obtaining prior approval from CMWD. Under no circumstance shall a sewer pipe or gas pipe or any other service pipe be installed closer than two feet clear from the service connection, water pipeline or meter.

#### SECTION 4: Repairs to Water Pipelines, Meters, and Service Connections

The CMWD shall, at its own expense, make all repairs necessary to water pipelines, meters and service connections. The CMWD shall make no repair or do any work whatsoever on the service connection beyond the meter. Any repair, including parts and labor, made necessary by any acts of negligence or carelessness of the customer, or other persons, shall be charged to and collected from the customer, or the person responsible therefore.

#### SECTION 5: Shutting Off Water or Recycled Water for Repairs

The CMWD reserves the right to shut off the water or recycled water supply from any premises at any time without notice, for the purpose of making repairs, extensions or other necessary purposes, or for any infraction of this ordinance.

#### SECTION 6: Steam Boilers, Hydraulic Elevators, Power Pumps, and Similar Apparatus

It is unlawful for any person to draw any water from any water pipeline or service connection of the CMWD, directly into any stationary steam boiler, hydraulic elevator, power pump or similar apparatus. If a customer desires water from the CMWD to be used in any stationary steam boiler, hydraulic elevator, power pump or similar

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apparatus, the customer must first apply therefore in writing to the CMWD, and if granted by the Board, such customer must provide a tank or reservoir of such capacity as is required by standard practice. No such tank or reservoir shall be installed or used unless and until the plans and specifications have been examined and approved in writing by the Public Works Director or his/her designee.

#### **SECTION 7: Right-of-Way Application for Service--Form**

Before any water will be supplied by the CMWD to any person which requires a connection from the CMWD water pipeline on any real property, the owner or occupant of the property shall make a written application for such service and service connection, upon submittal of a "Right of Way" permit application provided by the CMWD at the City of Carlsbad's Engineering Department.

#### **SECTION 8: Connection to Water Pipelines Upon Compliance**

Upon the applicant for water service having complied with all the requirements relating to written application for service, the CMWD will cause the property described to be connected with the water pipeline, subject to the provisions of this ordinance and the rules and regulations of the Board.

#### **SECTION 9: Multiple Service Connection and Meter and Multi-Ownership Building**

No water shall be served to two or more parcels of property separately owned through a common service connection and meter.

When more than one building is placed on the same parcel of property, then each building shall have at least one service connection and meter.

When a multi-ownership residential, commercial and industrial unit building is placed on the same parcel of property and each is conducting a separately established residence or business, a separate service connection and meter shall be required and installed for each ownership unit in the building. The cost of such service connection and meter installation shall be paid by the owner or party receiving water service. For good cause shown, the Public Works Director may allow one service connection and meter to a multi-ownership building to provide service to more than one residential, or commercial/office condominium on a case by case basis provided, however, that the size of the service connection and meter shall be determined based on the combined fixture units of all residential or commercial/office condominiums served by the meter, within the building. In cases where the Public Works Director allows one service connection and meter to a multi-ownership building, there shall be recorded a deed restriction or other such document as approved by the Public Works Director and General Counsel placing future unit owner's on notice that each and every residential or commercial/office unit in the building on the property is served by a single service connection and meter, and in the event that the water bill is not paid by the party or entity responsible for paying the monthly water service charges to the CMWD for the respective building occupied by the multi-ownership, the CMWD may at its discretion shut off the water service to such multi-ownership building in accordance with CMWD adopted rules and regulations. In addition, a multi-ownership building with a single service line and meter is required to install a private sub-meter for each separately established residence or business.

1       **SECTION 10: Discontinuance of Service Upon Written Notice**

2       Service will be discontinued and water service shut off by the CMWD within forty-eight  
3       hours of receiving written notice to discontinue water service.

4       **SECTION 11: Turning On of Water or Recycled Water**

5       It is unlawful for any person to turn on the water or recycled water after the same has  
6       been turned off by CMWD or City of Carlsbad.

7       **SECTION 12: Use of Water by Construction Workers – Water Meter Permit**

8       Contractors or any person, desiring to use water in construction work where  
9       connections must be made other than through a meter, shall in each and every case  
10      make written application for, and obtain a written permit for the same from the City of  
11      Carlsbad's Engineering Department before connecting to any water pipeline, fire  
12      hydrant or using water therefrom, and shall make the deposit required by the CMWD  
13      sufficient in its opinion to cover the estimated cost of the water to be used. Such Water  
14      Meter Permit shall be exhibited upon the work for which it has been issued during the  
15      full-time the water is being used pursuant to such permit.

16      **SECTION 13: Supplying to Other than Occupant of Premises**

17      It is unlawful for any person to supply water to any other person other than the  
18      occupants of the premises of such customer without written approval of the Public  
19      Works Director.

20      **SECTION 14: Customer to Accept Service Conditions**

21      All applicants for service connections or water service shall be required to accept such  
22      conditions of pressure and service as are provided by the distributing system at the  
23      location of the proposed service connection, and to hold the CMWD or City of Carlsbad  
24      harmless from all damage arising from low pressure or high pressure conditions or  
25      interruptions of service.

26      **SECTION 15: Violations**

27      It is unlawful for any person to violate any provision or fail to comply with any of the  
28      requirements of this Article. Any person violating any of the provisions or failing to  
29      comply with any of the provisions of this Article shall be guilty of a misdemeanor and  
30      shall be punished by a fine of not more than one thousand dollars or by imprisonment in  
31      the county jail for a period not exceeding six months, or by both.

32      **SECTION 16: Severability**

33      If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this  
34      Article or any part thereof, is for any reason held to be invalid, such decision shall not  
35      affect the validity of the remaining portions of this Article or any part thereof. The Board  
36      declares that it would have passed each section, subsection, subdivision, paragraph,  
37      sentence, clause, or phrase, thereof, irrespective of the fact that any one or more  
38      sections, subsections, subdivision, paragraphs, sentences, clauses, or phrases be  
39      declared invalid.

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## ARTICLE VI

### EXTENSION OF WATER OR RECYCLED WATER PIPELINE AND OTHER CMWD FACILITIES

#### SECTION 1: Excess Capacity

Excess capacity for the purpose of this Ordinance, is defined to mean only that excess capacity resulting from the construction of pipelines or facilities larger than those required by the applicant for extension under existing CMWD standards now or hereafter adopted.

#### SECTION 2: Application – Generally

Any person may apply to the Executive Manager of the CMWD for the installation of water pipelines and fire hydrants and other appurtenant facilities to be constructed either in public streets, alleys or private property; however, nothing herein contained shall be construed to modify any provision of the subdivision section hereinafter set forth, which requires the subdivider to make certain improvements within a subdivision and bear the cost thereof.

#### SECTION 3: Application – Contents

Prior to the applicant extending a water or recycled water pipeline or constructing a water or recycled water pipeline of excess capacity shall enter into a reimbursement agreement with CMWD, setting forth, among other things, a statement describing that which the applicant wishes to construct or have constructed, a map showing accurately the proposed route and size of such facility, the estimated cost of construction of such facility, payment schedule, auditing procedures, complete specifications as to the type of pipe and other appurtenances which the applicant desires to construct or have constructed, and applicant shall provide any and all additional information requested by the Executive Manager of the CMWD. In no event shall any water or recycled water facility be constructed unless the standard plans and specifications of the CMWD are observed and complied with.

#### SECTION 4: Size of Water Pipeline Extension

All water pipeline extensions will be installed in sizes best suited to the requirements and full development of the CMWD water system as determined by the Public Works Director. In no event will a water pipeline or recycled water pipeline extension be less than six inches in diameter.

No property shall be connected to a CMWD water or recycled water pipeline which is of inadequate size to meet the requirements and full development of the CMWD water system as determined by the Public Works Director.

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1       **SECTION 5: Determination of Adequacy of Size and Necessity by Executive**  
2                   **Manager; Contract between Applicant and CMWD; Reimbursement**  
3                   **of Applicant for Additional Cost**

4       The Public Works Director for the CMWD shall determine if the size of such proposed  
5       water pipeline is adequate to serve the intended use of applicant; further, the Public  
6       Works Director shall determine if there is other property within the CMWD not being  
7       served with water or recycled water which could be served by the proposed water or  
8       recycled water pipeline, and if it appears to the Public Works Director that it is  
9       necessary that the proposed water or recycled water pipeline and appurtenant facilities  
10      should be constructed to a greater capacity than the immediate needs of the applicant  
11      so that other property in the CMWD may be supplied with water or recycled water  
12      through such pipeline, then the Executive Manager shall recommend to the Board that a  
13      reimbursement agreement be entered into between applicant and the CMWD providing  
14      for the construction of such water or recycled water pipeline with excess capacity and  
15      establishing a reimbursement procedure and schedule for the additional costs incurred  
16      by building such water or recycled water pipeline with such excess capacity.

17       **SECTION 6: Determination of Materials to be Used and of Additional Cost of**  
18                   **Pipelines**

19      The quality of the materials of the water pipeline, hydrants, and other facilities in  
20      connection therewith shall be determined by the Public Works Director, who shall give  
21      due regard to the potential water service development in the territory that can  
22      reasonably be served by the extended water pipeline. The Executive Manager shall  
23      determine the amount of money necessary to cover the cost of construction of such  
24      water pipeline and shall determine the excess cost as hereinbelow provided, if any, over  
25      and above the cost of a standard size water pipeline facility sufficient to serve  
26      applicant's immediate need and use.

27       **SECTION 7: Payment of Proportionate Cost of Water or Recycled Water Pipeline**  
28                   **Prior to Connection**

29      Whenever any person applies for a connection to a water or recycled water pipeline  
30      which has been installed in any manner other than by public improvement proceedings  
31      for which an assessment has been levied, and neither the person nor his predecessor in  
32      interest has paid the proportionate share of the cost of the water or recycled water  
33      pipeline, with respect to the property served, no application shall be acted upon,  
34      allowed, or approved by the CMWD, or any of its administrative employees until such  
35      person has paid to the CMWD his proportionate share of the cost of the water or  
36      recycled water pipeline according to the terms, schedules, and conditions hereinafter  
37      set forth.

38       **SECTION 8: Method of Determining Excess Cost for Reimbursement Agreement**

39      In determining excess cost for a reimbursement agreement, the actual cost of  
40      construction, including necessary easement acquisitions, engineering and directly  
41      related incidental costs, shall be included plus any overhead for managing the  
42      construction contract. The Executive Manager shall make the final decision, subject to  
43      Board approval of the reimbursement agreement, in determining the pro-rata cost share

1 of the excess capacity. In all cases the minimum pipeline size for any property shall be  
2 at least 8-inches in diameter, and excess capacity shall be considered the difference in  
3 cost between the minimum pipe size or facility cost required for the property and the  
4 recommended size to meet CMWD system requirements. Any right to reimbursement  
5 hereunder, or pursuant to contract, shall expire in accordance with the time specified in  
6 the reimbursement agreement or ten years after the pipeline or facility has been  
7 accepted by the CMWD; provided, however, payment shall only be made to the  
8 applicant, or designee, at such address as shall have been filed with the CMWD, by the  
9 applicant for such purpose. No interest shall accrue to applicant pursuant to this  
10 Section, or under any contract entered into pursuant thereto. In no event shall the  
11 CMWD be liable or in any way responsible for failure to collect such connecting fees, or  
12 for failure to pay any money to applicant.

#### 13 **SECTION 9: Easements to be Provided; Title Insurance Policy; Construction** 14 **Costs to be Deposited**

15 If a reimbursement agreement is entered into between applicant and the CMWD,  
16 applicant shall provide easements in the event the water or recycled water pipeline or  
17 facilities lie outside public property, and shall provide a Title Insurance Policy showing  
18 that grantor has the valid title to grant such an easement. Such easement shall be  
19 subject to the approval of the General Council for the CMWD for legal adequacy and  
20 shall be subject to the approval of the Public Works Director and Executive Manager in  
21 all other respects. If applicant desires that such water or recycled water pipeline be  
22 extended or such water or recycled water pipeline and facilities be constructed by the  
23 CMWD and the Executive Manager recommends that the CMWD construct such  
24 facilities, which recommendation is approved by the Board, then, in that event, applicant  
25 shall deposit with the CMWD such sum of money as the Executive Manager shall  
26 determine to be necessary in order to construct the improvements specified in the  
27 reimbursement agreement.

#### 28 **SECTION 10: Source of Reimbursement**

The CMWD shall reimburse the applicant only from either the water connection fee fund  
or the water replacement fund, subject to availability of funds, and the CMWD's  
responsibility shall be no greater than as set forth in this Ordinance.

#### **SECTION 11: Improvements Constructed Under the Improvement Act of 1911 – CMWD's Participation**

If any of the improvements, which would otherwise qualify as above set forth, are  
constructed through a 1911 Act of Improvement District as defined in the Improvement  
Act of 1911, Division 7 of the Streets and Highways Code, the CMWD will agree to pay  
to the owner or owners of the property assessed within the CMWD, said payments  
running with the land at all times mentioned herein, the sums it would otherwise pay to  
an individual applicant under the terms of this Ordinance.

#### **SECTION 12: Time Limit for Recovery**

Any funds mailed to applicant or designee which are returned, or where the check,  
voucher or other payment remains uncashed for one year after such mailing, shall  
revert to the CMWD's water connection fee fund or water replacement fee fund as  
appropriate, and shall not be recoverable by applicant.

1       **SECTION 13: Agreement between CMWD and Contributor for Repayment of Off-**  
2       **Site Improvement**

3       The Executive Manager is empowered to prepare a reimbursement agreement to be  
4       entered into by the person who constructs off-site water or recycled water pipeline  
5       extensions and the CMWD. Such agreement shall provide that the CMWD will refund to  
6       the persons who paid for the cost of the water or recycled water pipeline extension all  
7       pipeline fees. The agreement shall be limited to a fifteen-year period from and after the  
8       date of signing. The CMWD shall not be liable to the subdivider for such moneys in the  
9       event that the collection of the charge is prevented by judgment or order of court, or in  
10      the event that such moneys are not collected due to inadvertence or neglect of the  
11      officers or employees of the CMWD or City of Carlsbad.

12      **SECTION 14: Water or Recycled Pipeline Extensions within Subdivisions**

13      Subdividers shall be required to install water or recycled water pipeline extensions to all  
14      property within the subdivision. When such water or recycled water pipeline extensions  
15      are constructed by the subdivider, then no refund agreement shall be available to the  
16      subdivider for any portion of the water or recycled water pipeline constructed within the  
17      limits of the subdivision or in streets that are immediately adjacent to the external limits  
18      of such subdivision with the following exception:

19      When a subdivider is required to install a water or recycled water pipeline extension in  
20      excess of his requirements for continuity and full development of the CMWD water  
21      system, as determined by the Public Works Director, then the CMWD will contribute for  
22      the additional costs required to construct the water or recycled water pipeline in excess  
23      of eight inches in diameter.

24      Subdividers shall be required to extend to the external limits of the subdivision all water  
25      and recycled water pipelines placed in and about the subdivision by the subdivider. The  
26      subdividers may enter into a reimbursement agreement with the CMWD as outlined  
27      heretofore for such other off-site portions of the water or recycled water pipeline  
28      extensions they must install for the subdivision.

29      **SECTION 15: Water or Recycled Water Pipeline Extensions for Length of**  
30      **Property Frontage**

31      A subdivider, contractor, or individual developer shall be required to install a water or  
32      recycled water pipeline extension to the external limits of his property line along the  
33      entire front of his property abutting upon the water or recycled water pipeline extension;  
34      except, when such person is the owner of a large undeveloped frontage, then in that  
35      event, the owner shall be required to install the water or recycled water pipeline  
36      extension for a minimum frontage of seventy-five feet; provided, that all of the following  
37      conditions prevail:

38      (1)     That the portion of the property being connected to the water or recycled water  
39      pipeline shall totally contain the residence of the owner, together with sufficient side  
40      yard setbacks as required by applicable zoning law;

41      (2)     That sufficient area remains in the unconnected portion of the property in which  
42      to construct one or more living units in accordance with the applicable zoning laws.

## ARTICLE VII

### ESTABLISHING FEES FOR ENGINEERING SERVICES

**SECTION 1:** The Engineering Service Fees shall be established by resolution of the Board of Directors of the CMWD and are for the purpose of defraying the cost of processing review, approval, and inspection of potable water and recycled water facilities, including pipeline and service line installation, replacement and relocation, easements and quitclaims in connection with the development review process of the City of Carlsbad:

1. Policy. The City of Carlsbad's Engineering Department shall provide plan checking services for potable and recycled water facilities to be constructed and added to the systems of the CMWD at a charge of estimated cost of providing such services.

2. Fees. The fees to review improvement plans related to CMWD facilities shall be charged based upon the estimated construction costs of the potable water and recycled water improvements, and all appurtenances only plus fifteen percent (15%) contingency based on current City of San Diego Bond Unit Prices, as determined by the Public Works Director or his/her designee upon review of the plans submitted in connection with any type of development within the CMWD. The fees shall be fixed and established by resolution of the Board of Directors of the CMWD.

3. Private Onsite Irrigation System. The private onsite irrigation system for a proposed development shall be plan checked by the City's Planning Department and Engineering Department. A plan check fee shall be paid to cover the City's cost to review and approve the plans of the private onsite irrigation system. The County of San Diego Environmental Health Department also will review all private onsite irrigation plans where recycled water is proposed to be used for irrigation. A separate Plan Check fee shall be submitted to the County of San Diego, together with the landscape construction drawings and City's application form.

### **SECTION 2: Adjustment of Fees by Resolution**

The City of Carlsbad's Finance Department, on behalf of CMWD, shall periodically review the fees charged for engineering services to ensure that the fixed fees do not exceed the estimated costs of providing the services, and are fair and appropriate. Adjustments to the fixed fees may be made at any time by resolution, but shall be adjusted annually by a ratio using the Engineering News Record construction cost index for Los Angeles.

### **SECTION 3: When Paid**

All fees to review improvement plans, easements or quitclaims are paid upon initial submittal to the City of Carlsbad. For improvement plans, the Applicant is responsible to pay an initial plan check fee that is based on the cost estimate submitted (Valuation) with the initial submittal. By the end of the plan check process of improvement plans, this Valuation may increase or decrease from the initial Valuation, thereby changing the plan check fee that would be due. Near the end of the plan check process and prior to

1 the plan approval, the Applicant is responsible to pay the balance of plan check fees or  
2 receive a refund for excess fee paid, depending on the Valuation change.

3 Prior to issuance of a right-of-way permit to construct the improvements, the Applicant  
4 shall pay inspection fees that cover the inspection of CMWD improvements.

## 5 **ARTICLE VIII**

### 6 **FIRE HYDRANTS**

#### 7 **SECTION 1: Use of Fire Hydrants – Generally**

8 Fire hydrants are provided for the sole purpose of providing connections for the  
9 extinguishing of fires, and shall be opened and used only by the CMWD and City of  
10 Carlsbad Fire Department or such persons as shall be authorized to do so by the  
Executive Manager of the CMWD.

#### 11 **SECTION 2: Regulation of Water Supply from a Fire Hydrant**

12 Persons wishing to take a supply of water from a fire hydrant must make application to  
13 the City's Engineering Department for such service by applying for a water meter permit  
14 to obtain a construction meter. The CMWD will make the necessary connections and  
install a meter of required size upon payment of a deposit fee and a rental fee in effect  
at the time of issuance of water meter permit.

#### 15 **SECTION 3: Replacing Cap After Use**

16 Every person authorized to open a fire hydrant shall replace the cap on the outlet when  
17 the same is not in use, and leave the hydrant in as good condition as when found, and  
18 such officer or person shall report to the CMWD or the Fire Chief of the City of Carlsbad  
any leaks or breaks or damage to the fire hydrant immediately upon discovery.

#### 19 **SECTION 4: Use of Fire Pipeline for Other than Fire Purposes**

20 No fire pipeline shall be used for any purpose other than for the extinguishment of fire,  
21 unless the same is equipped with a construction meter, in which event there shall be a  
22 charge for the water used, together with the cost of the construction meter.

#### 23 **SECTION 5: Private Fire Lines, Etc.; Service Connections**

24 Where a privately owned fire line is used for fire purposes only, and is connected to an  
25 automatic fire extinguishing system or other standard fire hydrant, the owner shall pay  
26 for all service connections from the CMWD water pipeline to the above ground double  
27 check valve assembly or approved check valve and backflow preventer assembly.  
28



1 **ARTICLE IX**

2 **CROSS-CONNECTION CONTROL PROGRAM**

3  
4 **SECTION 1: Purpose of Provisions**

5 The purpose of this Article is to:

- 6 (1) Protect the public water supply against actual or potential contamination through  
7 cross-connections by containing within the customer's system, sources of  
8 contamination that may occur within a customer's premises because of some  
9 undiscovered or unauthorized cross-connection on the premises;
- 10 (2) To provide for the maintenance of a continuing program of cross-connection  
11 control which will systematically and effectively prevent the contamination or  
12 pollution of the District's potable and recycled systems.

13 **SECTION 2: Adopted by Reference**

14 Article I of Group 4 of subchapter 1 of Chapter 5 of Title 17 of the California  
15 Administrative Code entitled "Drinking Water Supplies" (17 CAC Section 7583 et seq.)  
16 relating to the implementation of the cross-connection program and provisions for  
17 backflow protection, testing and maintenance of records of locations, tests and repairs  
18 of backflow prevention devices and its successor regulations within the code are  
19 adopted by reference and supplemented and implemented by this chapter.

20 Backflow testing requirements and passing test criteria shall be determined in  
21 accordance with the most recent requirements and/or recommendations of the  
22 California Department of Public Health's approved laboratory.

23 The California Regional Water Quality Control Board, San Diego Region, issues Orders  
24 that regulate recycled water use site conditions and inspection requirements within  
25 CMWD. All requirements of the current Order shall be deemed part of this Article.

26 **SECTION 3: Backflow Prevention Assembly Removal**

27 Approval must be obtained from the CMWD before a backflow prevention assembly is  
28 removed or relocated.

- 29 (1) The use of an assembly may be discontinued and the assembly removed from  
30 service upon presentation of sufficient evidence to the CMWD to verify that a  
31 hazard no longer exists or is not likely to be created in the future. The CMWD  
32 shall make the determination of whether a hazard exists.
- 33 (2) An assembly may be relocated following confirmation by the CMWD that the  
34 relocation will continue to provide the required protection and satisfy installation  
35 requirements. A retest, performed at the customer's cost, will be required  
36 following the relocation of the assembly.
- 37 (3) An assembly may be removed for repair, provided the water use is either  
38 discontinued until the repair is completed and the assembly is returned to  
39 service, or the service connection is equipped with other backflow protection
- 40

approved by the CMWD. A retest, at the customer's cost, will be required following the repair of the assembly.

- (4) An assembly may be removed and replaced provided the water use is discontinued until the replacement assembly is installed and retested at the customer's cost. All replacement assemblies must be approved by the CMWD.

#### **SECTION 4: Site Supervisor**

- (1) At each premise where recycled water is used or where it is necessary in the opinion of the CMWD, a site supervisor shall be designated by and at the expense of the customer. This site supervisor shall be responsible for complying with applicable rules and regulations relating to recycled water use, monitoring of backflow prevention assemblies and for avoidance of cross-connections.
- (2) The site supervisor shall attend CMWD approved training in the use of recycled water. The site supervisor shall be responsible for monthly tailgate trainings as well as training of new employees prior to their assignment to a recycled water use site. Documentation of these trainings will be required to be available during the annual walk through inspection.
- (3) In the event of the potential for contamination or pollution of the either the public or the customer's potable water system due to a cross-connection on the premises, the CMWD shall be immediately notified by the site supervisor so that appropriate measures may be taken to overcome the contamination.
- (4) The customer shall inform the CMWD of the site supervisor's identity (name, address and telephone number) on an annual basis and whenever a change occurs.
- (5) Failure to comply with site supervisor requirements may result in discontinuance of water service.

#### **SECTION 5: Water System Survey**

- (1) Backflow prevention assemblies will be required per the current edition of the City of Carlsbad Engineering Standards. These backflow assemblies shall be tested by a tester who meets the requirements for a backflow assembly tester per this ordinance upon installation at the customer's cost. The test must meet passing criteria as stated in Section II of this ordinance.
- (2) The CMWD may require an on-premise inspection to evaluate cross-connection hazards. The Public Works Director will transmit a written notice requesting an inspection appointment to each affected customer. Any customer who cannot or will not allow an on-premise inspection of his piping system shall be required to install the backflow prevention assembly the CMWD considers necessary.
- (3) The Public Works Director may, at his/her discretion, require a re-inspection for cross-connection hazards of any premise to which it serves water. The CMWD will transmit a written notice requesting an inspection appointment to each affected customer. Any customer who cannot or will not allow an on-premise inspection of their piping system shall be required to install the backflow prevention assembly the Public Works Director considers necessary. In addition, the CMWD may use any lawful procedure to enter and inspect any premises.

## **SECTION 6: Customer Notification--Assembly Installation**

- (1) The Public Works Director will notify the customer of the survey findings, listing the corrective actions to be taken if any are required. A period of thirty days will be given to complete all corrective actions required including the installation of backflow assemblies and passing test results submitted to the CMWD. Backflow assembly installation standards will be in accordance with the current edition of the City of Carlsbad Engineering Standards.
- (2) A second notice will be sent to each customer who does not take the required corrective actions prescribed in the first notice within the thirty calendar days allowed. The second notice will give the customer a two-week period to take the required corrective action.
- (3) A third and final notice shall be sent to each customer who does not take the required corrective action as prescribed in the first two notices. The final notice will give the customer ten days to take the required action. If the customer fails to complete the corrective action within the ten day period, the CMWD shall terminate water service to the affected customer until the required corrective actions are taken and the customer has paid all applicable fees associated with water service termination.

## **SECTION 7: Retrofitting Fire Protection Systems with Backflow Prevention Assemblies**

Upon any modification to existing fire protection systems that are not currently protected by either a reduced pressure principle detector assembly (RPDA) or a double check detector assembly (DCDA) the CMWD will require the fire service supply line be retrofitted with either a DCDA or an RPDA when any of the following occurs:

- (1) Any change in the fire protection water supply that would require an upgraded increase in the fire service supply line;
- (2) Any renovation work to a structure or structures, involving changes and/or additions to the fire sprinkler system, which require an increase in the minimum approved fire flow requirements from the underground fire service supply line;
- (3) When a leak is detected in the underground backflow swing-check valve, requiring replacement;
- (4) Any failure in the Post Indicator Valve system, which would require more work than the standard maintenance procedures,
- (5) Anytime a fire service supply line for an existing fire protection system fails, including maintenance, testing, and seismic failures, and the fire protection system shall be retrofitted with approved backflow prevention assemblies.

In all cases of a retrofit, the fire protection system shall be hydraulically calculated to meet the minimum fire flow demand of the fire sprinkler system. This determination shall be based on compliance with the National Fire Protections Association's standard for minimum design and water flow requirements for sprinkler systems.

1 The CMWD shall determine the degree of hazard to determine whether the fire service  
2 is retrofitted with a DCDA or an RPDA.

3 Detector assemblies will be installed per the current edition of the City of Carlsbad  
4 Engineering Standards.

### 5 **SECTION 8: Customer Notification-Testing and Maintenance**

- 6 (1) The Public Works Director will notify each affected customer in writing thirty days  
7 prior to the due date that the backflow prevention assembly installed on their  
8 service connection must be tested, repaired if necessary and then retested. This  
9 written notice provides the customer with the necessary form to be completed  
10 and resubmitted to the CMWD. The customer shall have a certified tester  
11 perform the test and document the results of the testing on the prescribed form.  
12 The customer is responsible to ensure that the completed form is returned to the  
13 CMWD in the prescribed time frame. Tests that do not meet passing criteria will  
14 not be accepted.
- 15 (2) A second notice shall be sent to each customer who does not have the backflow  
16 prevention assembly tested as prescribed in the first notice within the thirty  
17 calendar day period allowed. The second notice will give the customer a two-  
18 week period to have the backflow prevention assembly tested with passing test  
19 criteria.
- 20 (3) A third and final notice shall be sent to each customer who does not have the  
21 backflow prevention assembly tested as prescribed in the first two notices. The  
22 final notice will give the customer ten days to have the backflow prevention  
23 assembly tested with passing criteria. If no action is taken within the ten day  
24 period, the CMWD shall terminate water service to the affected customer. Water  
25 service shall not be reactivated until the customer has paid all applicable fees  
26 associated with water service termination and until the CMWD has been notified  
27 by an approved tester that they have been contracted to perform the backflow  
28 assembly test. The CMWD will make an appointment with the tester to restore  
water service so that the test may be performed. Any needed repairs and a  
passing re-test must be performed within 5 business days or water service will be  
discontinued, with all applicable fees being reapplied.

### 21 **SECTION 9: Water Service Termination**

- 22 (1) When the CMWD encounters water uses that represent a clear and immediate  
23 hazard to the potable water supply that cannot be immediately abated, the  
24 District shall institute the procedure for discontinuing the CMWD water service.
- 25 (2) Conditions or water uses that create a basis for water service termination shall  
26 include, but are not limited to the following items:
- 27 (a) Refusal to install a required backflow prevention assembly;
  - 28 (b) Refusal to test a backflow prevention assembly;
  - (c) Refusal to repair a faulty backflow prevention assembly;
  - (d) Refusal to replace a faulty backflow prevention assembly;
  - (e) Direct or indirect connection between the public water system and a sewer  
line;
  - (f) Unprotected direct or indirect connection between the public water system  
and a system or equipment containing contaminants;

23

(g) Unprotected direct or indirect connection between the public water system and an auxiliary water system;

(h) A situation which presents an immediate health hazard to the public water system.

(3) For conditions (a), (b), (c) or (d), the CMWD will terminate service to a customer's premise after three written notices have been sent specifying the corrective action needed and the time period in which it must be done. If no action is taken within the allowed time period water service shall be terminated. The water service will remain inactive until correction of violations has been approved by the CMWD and payment received for all applicable fees associated with water service termination.

(4) For conditions (e), (f), (g) or (h), the CMWD will take the following steps:

(1) Make reasonable effort to advise customer of intent to terminate water service;

(2) Terminate water supply and lock service valve. The water service will remain inactive until correction of violations has been approved by the CMWD and payment received for all applicable fees associated with water service termination.

## **SECTION 10: Requirements for Backflow Prevention Assembly Testers**

(1) Competency in all phases of backflow prevention assembly testing and repair must be demonstrated by means of education and/or experience in order to obtain certification.

(2) The following are minimum requirements:

a. Applicants shall hold and submit a copy to the CMWD of a valid backflow prevention assembly tester certificate from the American Water Works Association (AWWA) California-Nevada Section, American Backflow Prevention Association (ABPA), or have equivalent certification in the opinion of the CMWD and the California Department of Public Health.

b. All backflow testers shall submit to the CMWD current gauge calibration certificates for test kits to be used within the CMWD service area. Gauges must undergo an annual calibration check. The tester shall be responsible for the competency and accuracy of all tests and reports prepared by him/her.

(3) A tester may have his/her testing privileges revoked or suspended by the CMWD for improper testing, repairs and/or reporting.

## **SECTION 11: Recycled Water Use**

(1) Recycled water use sites inspections will be performed per the requirements of the State of California, - Department of Public Health, County of San Diego Department of Environmental Health, California Regional Water Quality Control Board, San Diego Region, or other regulatory agency or as determined by the CMWD.

(2) The recycled water user shall provide the CMWD with an accurate set of controller charts. The chart is to be a reduced drawing of the as-built system. The chart shall use a different color to show the area of coverage for each station.

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**SECTION 12: Fees**

Fees to implement, maintain, administer and enforce this chapter shall be established by resolution of the CMWD Board.

**SECTION 13: Violations**

It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. Any person violating any of the provisions or failing to comply with any of the provisions of this Article shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for a period not exceeding six months, or by both.

**SECTION 14: Severability**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article or any part thereof, is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The Board declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase, thereof, irrespective of the fact that any one or more sections, subsections, subdivision, paragraphs, sentences, clauses, or phrases be declared invalid.

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## ARTICLE X

### ESTABLISHING PROCEDURES FOR WORK IN THE CMWD RIGHT-OF-WAY

#### SECTION 1: Title

This article may be cited as the "Right-of-Way Permit" and "Encroachment Agreement."

#### SECTION 2: Definitions

The following words shall have the following meanings and set out in this article

(a) "Encroachment" means and includes any tower, pole, pole line, pipeline, fence, billboard, stand or building, or any structure or pavement of any kind or character whether or not it is particularly mentioned in this subsection, which is placed in under or over any portion of a CMWD right-of-way.

(b) "Right-of-Way" means any CMWD real property easement, CMWD interest in real property or public utility easement used by the CMWD.

(c) "Plans" means the document developed and approved by the Public Works Director describing the nature and extent of works proposed to be constructed or carried out on a CMWD right-of-way.

(d) "Specification" means the Standard Specifications used for public works construction (current edition including supplements) written and promulgated by the Southern California Chapter of American Public Works Association and Southern California District Associated General Contractors or California Joint Cooperative Committee and published by Building News Incorporated or other such specifications noted on approved plans including CMWD standard drawings and specifications.

(e) "Standard Drawings" means the standard drawings of the Carlsbad Municipal Water District, adopted and revised by the Public Works Director and most recently adopted San Diego Regional Standard Drawings.

#### SECTION 3: Public Works Director's Authority and Responsibilities

This article shall be administered by the City of Carlsbad's Public Works Director who shall have the responsibility and authority to:

(a) Establish the form and procedures for application for encroachment permits required pursuant to this article including the certification of completed applications, the approval of plans, the establishment of files, collection of fees and security deposits;

(b) Interpret provisions of this article and advise the public regarding requirements for plans, specifications, and special provisions for facilities or encroachments subject to the provisions of this article;

(c) Establish the format and content of plans and standards governing work on facilities or encroachments pursuant to the provision of this article;

(d) Issue permits upon such conditions as determined are reasonable and necessary to protect the public health, safety and welfare;

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1 (e) Amend any permit issued when determined that such amendment is  
2 necessary to provide for the safe and efficient movement of traffic, or protect CMWD  
3 facilities, persons or property.

#### 4 **SECTION 4: Permits--Required**

5 No person shall do any of the following acts without first obtaining a valid right-of-way  
6 permit and encroachment agreement;

7 (a) Make or cause to be made excavation or opening, fill or obstruction in,  
8 over, along, across, or through any CMWD right-of-way for any purpose whatsoever;

9 (b) Construct or repair or cause to be constructed or repaired any curb,  
10 sidewalk, gutter, curb with integral gutter, drive approach, driveway, alley approach,  
11 spandrel and cross gutter, wheelchair ramp, structure, planter, wire, pipe, or vault over,  
12 along, across, overhanging or through any CMWD right-of-way;

13 (c) Plant, any tree, plant shrub or flower within any CMWD right-of-way.

14 (d) Construct or modify or cause to be constructed or modified, any storm  
15 drain or conveyor of drainage of waters and appurtenance items within a CMWD right-  
16 of-way, except for drainage by controlled surface flow.

17 (e) Modify, alter or deface any block wall on or adjacent to a CMWD right-of-  
18 way.

19 (f) Enter into or exit from any CMWD right-of-way at any location not  
20 approved and constructed as a driveway.

#### 21 **SECTION 5: Application for Right-of-Way Permit or Encroachment Permit**

22 (a) Any person proposing to do any of the acts described in Section 4 of this  
23 article shall make an application for a 1) right-of-way permit and if required 2)  
24 Encroachment Agreement to the Public Works Director.

25 (b) The following information shall be included in the application;

26 (1) The location, nature, and extent of work to be performed;

27 (2) The proposed date when such work shall be commenced;

28 (3) The proposed date when the work shall be completed;

(4) Such other information as may be required by the Public Works  
Director;

(c) The Public Works Director may require the application to contain an  
encroachment agreement if deemed necessary due to the size duration, and/or nature  
of the encroachment. The encroachment agreement shall:

(1) Require the encroachment to be placed and maintained in a safe  
and sanitary condition;

(2) Require removal of the encroachment by the permittee upon  
reasonable demand by the Public Works Director;

(3) Allow the CMWD to remove the encroachment and place a lien on  
the property if the permittee does not remove the encroachment in a reasonable time  
period;

(5) Allow for the removal of the encroachment by the CMWD during the  
performance of any emergency repairs without liability to the CMWD for damages;

(6) Require adequate security of performance of such promise;

(7) Require indemnification of the CMWD in accordance with Section  
16 of this ordinance;



(8) Be in a form acceptable to the General Counsel.

## **SECTION 6: Permits--Requirements of Plans**

If, in the opinion of the Public Works Director, the work proposed to be done requires the making of plans or setting of stakes, or both, the Public Works Director may require the application to be accompanied by the necessary plans, which plans shall be prepared by a competent engineer licensed by the California Department of Consumer Affairs. The plans shall be reviewed by the Public Works Director or designee and shall pay the necessary fees in accordance with Article VIII. The Applicant shall bear all costs to prepare and process said plans.

## **SECTION 7: Permits—Commencement and Completion of Work**

Every permittee shall commence work as stipulated in the permit application and diligently pursue the work to completion without interruption within the time period specified in the permit. A Permit issued under this ordinance may be limited to a period of time as specified in the permit.

## **SECTION 8: Permits—Requirements for Performance of Work**

(a) The permittee shall perform the work in a timely manner, in accordance with applicable plans, specification and CMWD standards and to the satisfaction of the Public Works Director.

(b) No person shall cause any improvement or appurtenant work to be performed on any CMWD right-of-way by any person other than a licensed contractor or a public utility.

(c) All work shall be inspected by the representative as follows:

(1) No person shall prevent or obstruct the CMWD representative in making any inspection authorized by this ordinance or in taking any sample or in making any test;

(2) Inspection requests must be made with twenty-four hour notice to the CMWD.

(3) All work not in conformance with approved plans and specifications is subject to rejection by the CMWD.

(4) Request for final inspection shall be made in writing.

(d) As the work progresses, the CMWD right-of-way shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. All construction and maintenance work shall be done in a manner designed to leave the area clean of earth and debris and in a condition as nearly as possible to that which existing before such work began. All cleanup operations at the location of such work shall be accomplished at the expense of the permittee. Upon failure of the permittee to clean the area, the CMWD may proceed with cleanup and removal of the material or obstruction in accordance with procedures identified in Section 14 of this article.

## **SECTION 9: Permits—Acceptance of Work**

If the Public Works Director, by survey or by inspection or by both, determines that the work has been completed according to the requirements of this ordinance and the permit, he shall issue a certificate of acceptance, which shall contain a statement of the location, nature, and extent of the work performed under the permit.

1       **SECTION 10: Permits—Denial and Revocation**

2           (a)     The CMWD may deny the issuance of a right-of-way permit to any person  
3     who refuses or fails to comply with the provision of this ordinance, who is indebted to  
4     the CMWD for past permit violations, or who in the judgment of the Public Works  
   Director has repeatedly violated permit procedures or failed to comply with conditions  
   requiring protection of the public health and safety.

5           (b)     The Public Works Director may deny the issuance of a right-of-way permit  
6     to any person who refuses to execute an encroachment agreement as required by  
   Section 5.

7           (c)     Any permittee found in violation of the conditions of permit or the  
8     provisions of this ordinance shall be given a written notice to comply, stipulating the  
9     violation. Upon receipt of the notice to comply, the permittee shall take action to correct  
10    the condition of violation within the period stipulated in the notice. If, within the period,  
   appropriate measures have not been implemented, the CMWD may revoke the permit  
   and take any measures required to secure the work site or return the work site to its  
   original condition. The cost of such work may be collected from the permittee.

11          (d)     A revoked permit may be reinstated if the permittee demonstrates to the  
   satisfaction of the Public Works Director that work will be continued in conformance with  
   the permit and the provisions of this ordinance.

12          (e)     The Public Works Director shall require, as a condition of the permit,  
13    reinstatement of payment of all charges incurred by the CMWD as a result of permit  
14    revocation including a five hundred dollar (\$500) penalty for violation of the provisions of  
   this article.

15       **SECTION 11: Appeal Procedure**

16          (a)     Any person aggrieved by any decision of the Public Works Director with  
17    respect to the issuance, revocation, or refusal to issue a right-of-way permit may appeal  
18    to the Board of Directors by filing a notice of appeal with the Secretary of the Board  
19    within ten calendar days after the date of the decision of the Public Works Director.  
   Appeals shall be in writing and shall state the basis for the appeal. Fees for filing an  
   appeal shall be in amount established by resolution of the Board of Directors. The  
   decision of the Board of Directors shall be final.

20          (b)     The Secretary shall thereupon fix a time and place for hearing such  
21    appeal. The secretary shall give notice to the appellant and applicant/permittee of the  
22    time and place of hearing by serving the notice personally or by depositing it in the  
   United States Post Office postage prepaid, addressed to such persons at their last  
   known address unless otherwise requested in the notice of appeal.

23          (c)     The Board of Directors shall have the authority to determine all questions  
   raised on such appeal.

24       **SECTION 12: Encroachment and Right-of-Way Application and Permit Fees**

25    Encroachment application and right-of-way permit fees shall be charged by the CMWD  
26    for the processing of an encroachment application and the issuance of a right-of-way  
27    permit. The fees shall be established by resolution of the Board of Directors for the  
28    CMWD, for the purpose of defraying the cost of processing an application, issuing the

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1 requested permit, inspection of works completed under the permit and other costs of  
2 administrating this ordinance. The fees shall be paid at the time of application.

### 3 **SECTION 13: Performance Deposits**

4 (a) As a condition of issuance of a right-of-way permit, the Public Works  
5 Director may require posting of a cash deposit or an equivalent security in a form  
6 acceptable to the General Counsel. The Applicant shall post a security for 100% of the  
7 bond amount for performance, and 50% of the bond amount for labor and materials  
8 totaling 150% of bond amount. The cash deposit may be used at the discretion of the  
9 Public Works Director to provide for restoration of CMWD facilities or removal from the  
10 right-of-way of work, materials or equipment when permittee or the permittee's agent  
11 fails to act in a timely manner to provide for the public health, safety or welfare. The  
12 deposit shall otherwise be for the purpose of guaranteeing performance of work  
13 contemplated under the permit.

14 (b) The amount of the deposit shall be established by the Public Works  
15 Director.

16 (c) Upon completion and acceptance of work under permit, any funds unused  
17 shall be refunded to the Applicant and any other bonds or security instruments shall be  
18 released.

19 (d) If, in the opinion of the Public Works Director, any deposit or security is not  
20 sufficient for the protection of the public interest in the public places, the Public Works  
21 Director may require an additional deposit or an increase in the security in such amount  
22 as he determines necessary. The permittee shall, upon demand, deposit the additional  
23 cash or security.

24 (e) Upon failure or refusal to pay, the Public Works Director may revoke the  
25 permit and/or recover the deficiency by appropriate action in any court of competent  
26 jurisdiction, until such deficiency is paid in full, no other permit shall be issued to such  
27 permittee.

### 28 **SECTION 14: Placement of Materials or Obstruction of CMWD Right-of-Way**

(a) No person shall place or maintain any material or any obstruction or  
impediment to travel in or upon any CMWD Right-of-Way without a permit to do so.

(b) Persons violating provisions of this Section 8(d), or Section 15(a) shall be  
issued a notice of removal and given a specified time to remove such material,  
obstruction or impediment. Any failure to comply with the notice is unlawful and a public  
nuisance endangering the health, safety and general welfare of the public. In addition to  
any other remedy provided by law for the abatement of such public nuisance, the Public  
Works Director may, after giving notice, cause the work necessary to accomplish the  
removal. The costs thereof may be assessed against the owner or owners of the project  
creating the obstruction.

(c) Notice of removal shall be in writing and mailed to all persons whose names  
appear on the last equalized assessment roll as owners of real property creating the  
obstruction at the address shown on the assessment roll. Notice shall also be sent to  
any person known to the Public Works Director to be responsible for the nuisance. The  
Public Works Director shall also cause at least one copy of such notice to be posted in a  
conspicuous place on the premises. No assessment shall be held invalid for failure to  
post or mail or correctly address any notice. The notice shall particularly specify the  
work required to be done and shall state that if the work is not commenced within  
twenty-four hours after receipt of such notice and diligently prosecuted (without  
interruption) to completion, the CMWD shall cause such work to be done, in which case  
the cost and expense of such work, including incidental expenses incurred by the

CMWD, will be assessed against the property or against each separate lot and become a lien upon such property.

(d) If upon the expiration of the twenty-four hour period provided for in subsection (c) of this section, the work has not commenced or is not being performed with diligence, the Public Works Director shall proceed to do such work or cause such work to be done. However, the CMWD may proceed to remove the encroachment immediately and without notice to the owner if removal of the encroachment is necessary to make emergency repairs to CMWD facilities.

(e) Upon completion of such work, the Public Works Director shall file written report with the Board of Directors setting forth the fact that the work has been completed and the cost thereof, together with a legal description of the property against which cost is to be assessed. The Board of Directors shall thereupon fix a time and place for hearing protest against the assessment of the cost of such work. The Public Works Director or the Secretary of the Board, if so directed by the Board, shall thereafter give notice in writing to the owners of the project in the manner provided in subsection (c) of the hour and place that the Board of Directors will pass upon the Public Works Director's report and will hear protests against the assessments. Such notice shall also set forth the amount of the proposed assessment.

(f) Upon the date and hour set for the hearing of protests, the Board of Directors shall hear and consider the Public Works Director's report and all protests, if there are any, and then proceed to confirm, modify or reject the assessments.

(g) A list of assessments as finally confirmed by the Board of Directors shall be sent to the City of Carlsbad Finance Department for collection. If any assessment is not paid within ten days after its confirmation by the Board of Directors, the secretary shall cause to be filed in the office of the county recorder a notice of lien, substantially in the following form:

#### **NOTICE OF LIEN**

Pursuant to Carlsbad Municipal Water District (Ordinance No. \_\_\_\_), the Carlsbad Municipal Water District did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, cause maintenance and report work to be done in the CMWD right-of-way for the purpose of abating a public nuisance caused by activities related to construction at the property described below. The Board of Directors of the Carlsbad Municipal Water District did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by its Resolution No. \_\_\_\_\_ assess the cost or portion of the cost thereof upon the real property hereinafter described, and the same has not been paid nor any part thereof, and the Carlsbad Municipal Water District does hereby claim a lien upon said real property until the same sum with interest thereon at the maximum rate allowed by law from the date of the recordation of this instrument has been paid in full and discharged of record. The real property hereinbefore mentioned and upon which a lien is hereby claimed is that certain parcel of land in the City of Carlsbad, County of San Diego, State of California, particularly described as follows:

(Description of property)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Secretary of the Board, Carlsbad Municipal Water District

\*

1 (h). From and after the date of recordation of such notice of lien, the amount of  
2 the unpaid assessment shall be a lien on the property against which the assessment is  
3 made, and such assessment shall bear interest at the maximum rate allowed by law  
4 until paid in full. The lien shall continue until the amount of the assessment and all  
5 interest thereon has been paid. The lien shall be subordinate to tax liens and all fixed  
6 special assessment items previously imposed upon the same property, but shall have  
7 priority over all contractual liens and all fixed special assessment liens, which may  
8 thereafter be created against the property. From and after the date of recordation of  
9 such notice of lien, all persons shall be deemed to have notice of the contents thereof

#### 10 **SECTION 15: Relocation of Structures—Removal of Encroachment**

11 (a) The Public Works Director may require any permittee, who pursuant to a  
12 duly issued right-of-way permit under this ordinance, has performed construction work  
13 or placed and maintained any encroachment, to remove or move the encroachment at  
14 the permittee's own cost and expense to such different location as is specified in a  
15 written demand of the Public Works Director, whenever such move is necessary to  
16 ensure the safety and convenience of the public or facilitate construction. The Public  
17 Works Director shall specify in the demand a reasonable time within which the work of  
18 relocation must be commenced, and the permittee must commence such relocation  
19 within the time specified in the demand and thereafter diligently prosecute the same to  
20 completion. If permittee fails to diligently remove the encroachment, the Public Works  
21 Director may proceed under Section 14 of this Article.

22 (b) The CMWD shall have the right to relocate or remove any encroachment  
23 in response to an emergency condition requiring immediate repair, without the  
24 notification of the permittee or the owner of any encroachment into a CMWD right-of-  
25 way.

#### 26 **SECTION 16: Holding CMWD Harmless--Insurance**

27 The applicant for a permit, as a condition to receiving a permit shall sign a statement  
28 that he agrees to indemnify and hold harmless the CMWD and each officer and  
employee thereof, from any liability or responsibility for death or injury to persons and  
loss or damage to property happening or occurring as a result of the design or  
performance of any work undertaken under any permit granted pursuant to the  
application. The applicant may be required to provide proof of liability insurance in an  
amount set by a resolution of the Board and may be requested to name the CMWD as  
an additional insured under the insurance policy. The insurance shall be provided by a  
company satisfactory to the Risk Manager. Any deductible or self-insured retention  
under the insurance policy shall be in amount acceptable to the Risk Manager.

#### 29 **SECTION 17: CMWD Not Liable for Damage to Encroachment or Encroachment** 30 **Area**

31 The CMWD shall not be liable for any damages whatsoever to the encroachment  
32 facilities or encroachment area when the damages are related in any way to the  
33 District's continued use of the right-of-way, or are as a result of the CMWD's  
34 construction, use, repair, replacement or relocation of any CMWD facilities within the  
35 right-of-way.

1     **SECTION 18: Exemptions**

2     The CMWD and its employees, acting in their official capacity, are exempt from the  
3     requirements set forth in the ordinance.

4             EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption;  
5     and the district secretary shall certify to the adoption of this ordinance and cause it to be  
6     published at least once in a newspaper of general circulation in the City of Carlsbad within  
7     fifteen days after its adoption.

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1 INTRODUCED AND FIRST READ at a Joint Special Meeting of the Carlsbad  
2 Municipal Water District Board of Directors and Carlsbad City Council on the 19th day of  
3 May, 2009, and thereafter.

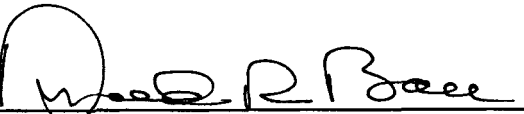
4 PASSED, APPROVED AND ADOPTED at a Joint Special Meeting of the  
5 Carlsbad Municipal Water District Board of Directors and Carlsbad City Council held on  
6 the 2nd day of June, 2009, by the following vote:

7  
8  
9 AYES: Board Members Lewis, Kulchin, Hall, Packard and Blackburn.

10 NOES: None.


11 ABSENT: None.

12  
13 APPROVED AS TO FORM AND LEGALITY:

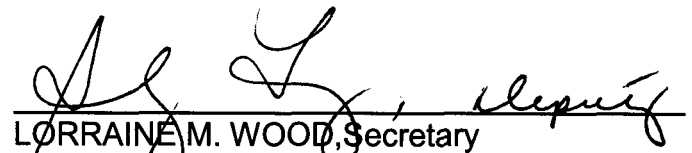
14  
15  
16 

RONALD R. BALL, General Counsel

6/3/2009.

17  
18  
19   
CLAUDE A. LEWIS, President

20  
21 ATTEST:

22  
23   
LORRAINE M. WOOD, Secretary  
(SEAL)

